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82-2144
NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

EDWARD J. WOODRUFF and MARY C. WOODRUFF,
Petitioners,

v.

PEGGY DOREEN ANGUS next friend of
TRACY ANGUS, SUSAN ROSE WATERS CASE
next friend of CYRUS M. WATERS,
and SITKA COMMUNITY ASSOCIATION,
Respondents.

ON A PETITION FOR A WRIT OF CERTIORARI
TO THE OREGON COURT OF APPEALS

RESPONDENTS TRACY ANGUS and CYRUS WATERS' BRIEF IN OPPOSITION

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Respondents Tracy Angus and Cyrus Waters respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the Oregon Court of Appeals Decision.

RESPONDENTS' STATEMENT OF THE CASE

In September 1981, the mother of the child who is the subject of this litigation signed a consent to place her son for adoption. In the litigation that followed this consent was found to be invalid under the Indian Child Welfare Act and the Oregon courts ordered that this child be returned to his natural parents.

About ten days before petitioners were required to return the child under the courts' orders, they succeeded in persuading the State of Oregon to file a petition in Multnomah County Juvenile Court seeking to have the child made a ward of the court and placed in their custody. This was a new legal proceeding separate from the habeas corpus proceeding. The juvenile court transferred this proceeding to the Sitka Community Association tribal court. (Appendix 1). Petitioners did not appeal this state court order and

it is now final.

A hearing was held in tribal court on April 14, 1983. The child's parents, the Tribe, and the petitioners all participated and presented evidence on the issues of wardship and placement. The tribal court ordered that the child be made a ward of that court and placed in the custody of his parents. (Appendix 2). Petitioners did not appeal this tribal court order and it is final.

REASONS FOR DENYING THE WRIT

I. THE OREGON COURT OF APPEALS CORRECTLY DECIDED THE CONSTITUTIONALITY OF THE INDIAN CHILD WELFARE ACT IN ACCORDANCE WITH PRIOR DECISIONS OF THIS COURT.

Congress has plenary power over Indian affairs and a long unbroken line of Supreme Court cases has recognized and upheld this power. Morton v. Mancari, 417 U.S. 535 (1974); Board of County Comm'rs v. Seber, 318 U.S. 705 (1943); U.S. v. Kagama, 118 U.S. 375 (1886);

Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

Decisions of this Court have clearly held that federal legislation on behalf of Indian tribes does not violate the fifth amendment. United States v. Antelope, 430 U.S. 641 (1977); Fisher v. District Court, 424 U.S. 382 (1976). Such federal legislation derives from the unique status of Indian tribes as a separate people with their own sovereign governments. Federal legislation pertaining to Indians is not based upon an impermissible racial classification but upon their political status as members of an Indian tribe; it is a political classification, not a racial one. E.g., United States v. Antelope, 430 U.S. 641 (1977); Fisher v. District Court, 424 U.S. 382 (1976); Morton v. Mancari, 417 U.S. 535 (1974).

The standard for judicial review of federal legislation singling out Indians

is that the legislation will be upheld if it can be tied rationally to the fulfillment of Congress' unique obligation to Indians. Delaware Tribal Business Comm. v. Weeks, 430 U.S. 73 (1977); Morton v. Mancari, 417 U.S. 535 (1974). No federal statute has ever been overturned under this standard. See, F. Cohen, Handbook of Federal Indian Law 657 (1982 ed.); Johnson & Crystal, Indians and Equal Protection, 54 Wash. L. Rev. 587 (1979). When federal legislation on behalf of Indians is reasonably and rationally designed to further tribal self-government, it does not violate due process. Morton v. Mancari, 417 U.S. 535, 555 (1974).

Congress clearly had the power and responsibility to enact the Indian Child Welfare Act of 1978. As Congress stated in the Act itself, "there is no resource that is more vital to the continued existence and integrity of Indian tribes than

their children and that the United States has a direct interest, as trustee, in protecting Indian children." 25 USC § 1901(3). Few issues are as crucial to the furtherance and protection of tribal culture and self-government as determining how and by whom future members of the tribe will be reared. See, e.g., Indian Child Welfare Act of 1977: Hearing on S. 1214 Before the Senate Select Comm. on Indian Affairs, 95th Cong., 1st Sess. (1977).

The Oregon Court of Appeals correctly applied the prior decisions of this Court and found this Act to be constitutional. To reverse the Oregon Court of Appeals, this Court would have to create an exception to the prior clear and uniform law on the due process standards of judicial review of federal Indian legislation. Petitioners' challenge to this Act is without merit.

II. THE OREGON COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH DECISIONS OF OTHER STATE APPELLATE COURTS.

There is no present conflict in the law of state courts needing resolution by this Court. All state appellate courts deciding the question of the constitutionality of the Indian Child Welfare Act are in accordance with the Oregon Court of Appeals that the Act is constitutional. In re Appeal of Pima County, 130 Ariz. App. 202, 635 P.2d 187 (1981), cert. denied, 455 U.S. 1007 (1982); E.A. v. Alaska, 623 P.2d 1210 (Alaska 1981); In re D.L.L. and C.L.L., 291 N.W. 2d 278 (S.D. 1980).

III. THE CONSTITUTIONAL ISSUE HAS BEEN SUPERSEDED BY SUBSEQUENT STATE AND TRIBAL FINAL COURT ORDERS THAT LEAVE NO CASE OR CONTROVERSY FOR THIS COURT TO DECIDE.

Petitioners participated in a second, separate proceeding after exhausting their state appellate remedies below.

This second proceeding resulted in final state and tribal court orders making the child subject to the exclusive jurisdiction of the tribal court. Therefore, there is no case or controversy remaining for this Court to decide. Any decision this Court makes will not alter the present situation or the status of the child as a ward of the tribal court. Even if this Court were to reverse the Oregon Court of Appeals, the state court would no longer have jurisdiction over this child. 1/ Therefore, any opinion this Court renders would be merely advisory.

1/ Under pre-ICWA Oregon case law, the tribal court order would be honored under principles of comity. Red Fox v. Red Fox, 23 Or. App. 393, 542 P.2d 918 (1975). Other pre-ICWA cases also recognize the exclusive subject matter jurisdiction of tribal courts. Wisconsin Potowatomies v. Houston, 393 F. Supp. 719 (1973); Wakefield v. Little Light, 276 Md. 333 (1975). See, Fisher v. District Court, 424 U.S. 382 (1976).

CONCLUSION

This Court should deny the Writ of Certiorari to review the Oregon Court of Appeals decision.

Sande Schmidt
Of Attorneys for Respondents
Tracy Angus and Cyrus Waters

June 27, 1983

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IN THE CIRCUIT COURT OF THE
STATE OF OREGON
FOR MULTNOMAH COUNTY

Juvenile Department

In the Matter of	)	No. 79,711
	)	
WOODRUFF, Matthew	)	ORDER AND DISPOSITION

The above-entitled matter having come on for hearing on the 15th day of March, 1983, upon the petition of William G. Morris, dated March 9, 1983, praying that investigation be made of the circumstances concerning the above-named child; the following persons being present at the hearing:

Sande Schmidt, Attorney for Mother and Father
Edward and Mary Woodruff, Physical Custodians
John Goss, Attorney for Mr. and Mrs. Woodruff
LeRoy W. Wilder, Attorney for Sitka Community Association
Mike Beaver, Children's Services Division
Jane Wiener, Deputy District Attorney
Kathleen E. Jensen, Juvenile Court Counsellor

and it appearing to the Court, and the Court finding that:

1. Due notice of this proceeding has been given to all persons interested herein, according to the statutes in such cases made.

2. The child resides in Multnomah County, and is 18 months of age.

3. The above-named child is not within the jurisdiction of the Court by

reason of the following facts:

This matter came before the Court on the petition of the child's natural parents to transfer this proceeding to the Sitka Community Association. The attorney for said tribe similarly petitioned for a transfer of the proceedings on the grounds that the Indian Child Welfare Act provides, "the Court in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent..." The Court considered legal arguements of the attornesy, the recent decision of the Court of Appeals regarding the minor, and the transcript of proceedings held earlier in 1982 before Judge Nachtigal.
The Court being fully advised in the premises:
NOW THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED; that

1. The Court orders that the petitions of the Sitka Community Association and of the natural parents should be allowed.
2. The Court further orders that the above-entitled proceeding be transferred to the jurisdiction of the Sitka Community Association.

DATED this 15th day of March, 1983.

/s/ Mercedes F. Diez
JUDGE

9720F/MFD/KJ/rs

IN THE CHILDREN'S COURT OF THE

SITKA COMMUNITY ASSOCIATION

IN THE MATTER OF	)	NO: 100.25
	)	
LUKAS MICHAEL WATERS,	)	ORDER
	)	
a minor.	)	

THIS MATTER came before the Court on April 14, 1983. Having heard and considered the evidence and arguments presented,

IT IS HEREBY ORDERED that:

1. The Court has jurisdiction of the case;
2. Lukas Michael Waters is a ward of the Court;
3. Lukas Michael Waters be placed in the custody of his parents, Tracy Agnus and Cyrus Waters, on Saturday, April 16, 1983, at 10:00 a.m.;
4. Appropriate supportive services, if necessary, be provided to the child and his parents through

Evelyn Blanchard under the supervision and control of the Sitka Community Association; and

5. A review hearing be set within 120 days of the day of this Order to be held before Anita Jackson, judge pro tem.

DATED this 15 day of April, 1983.

/s/ Anita N. Jackson
CHILDREN'S COURT JUDGE PRO TEM